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September 14, 2009

Via Electronic and U.S. Mail

Public Utility Commission
Attn: Filing Center
550 Capitol St. NE #215
P.O. Box 2148
Salem OR 97308-2148

Re: In the Matter of International Paper Company v. PacifiCorp
Docket No. UM 1449

Dear Filing Center:

Enclosed please find the Response in Opposition to PacifiCorp's Motion for Clarification or for Extension of Time to Answer on behalf of the International Paper Company in the above-referenced docket.

Thank you for your assistance.

Sincerely yours,

/s/ Allison M. Wils
Allison M. Wils

Enclosures

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day filed the foregoing Response in Opposition to PacifiCorp's Motion for Clarification or for Extension of Time to Answer on behalf of the International Paper Company, upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, and via electronic mail.

Dated at Portland, Oregon, this 14th day of September, 2009.

/s/ Allison M. Wils
Allison M. Wils

PACIFIC POWER & LIGHT
BARB COUGHLIN
DIRECTOR, CUSTOMER & REGULATORY LIASON
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**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1449

INTERNATIONAL PAPER COMPANY,)	
)	
Complainant,)	
)	
v.)	
)	
PACIFICORP, dba PACIFIC POWER,)	INTERNATIONAL PAPER
)	COMPANY'S RESPONSE IN
)	OPPOSITION TO PACIFICORP'S
)	MOTION FOR CLARIFICATION OR
Defendant.)	FOR EXTENSION OF TIME TO
)	ANSWER
<hr/>		

I. Introduction

International Paper Company (“International Paper”) submits this response to PacifiCorp’s motion for clarification or for extension of time to answer (“Clarification Motion”), filed with the Public Utility Commission of Oregon (“OPUC” or the “Commission”) in Docket No. UM 1449 on September 11, 2009. International Paper respectfully requests that the Commission deny PacifiCorp’s Motion and, pursuant to OAR § 860-029-0100(7), require that PacifiCorp file an answer on September 18, 2009; which still allows PacifiCorp ten full days for response after service of the complaint.

II. Background

Pursuant to OAR § 860-029-0100, International Paper filed a complaint with the OPUC against PacifiCorp on September 4, 2009 (“Complaint”). On September 8, 2009, PacifiCorp was served with the Complaint. Clarification Motion at 1. Upon

service of the Complaint, the Commission indicated on its eDocket that PacifiCorp had until September 18, 2009, to file an answer to the Complaint. Id. at 3. According to OAR § 860-029-0100(7), a respondent to a complaint filed pursuant to OAR § 860-029-0100 must “[w]ithin 10 calendar days of service of the complaint” file a response with the Commission. Apparently, having served PacifiCorp on September 8, 2009, the Commission simply applied the rule’s directive in assigning a response due date exactly ten days in the future.

International Paper also filed a motion for waiver of OAR § 860-029-0100(5)(a), and for leave to file its complaint on September 4, 2009 (“Waiver Motion”). In the Waiver Motion, International Paper explained why the usual (5)(a) requirement—i.e., that a complainant state that 60 days had passed after submission of written commentary to a utility on a draft power purchase agreement (“PPA”) *before* filing a complaint—would be inequitable due to PacifiCorp’s lack of good faith in unreasonably delaying qualifying facility (“QF”) PPA negotiations. Waiver Motion at 2–3. Accordingly, International Paper asked the Commission to waive the paragraph (5)(a) requirement, and to grant International Paper leave to file its Complaint. Id. at 4.

On September 10, 2009, International Paper filed a motion for expedited consideration of the Waiver Motion (“Motion to Expedite”). The following day, on September 11, 2009, PacifiCorp filed the Clarification Motion. First, PacifiCorp responded to the Motion to Expedite by opposing expedited consideration. Clarification Motion at 1–3. Second, PacifiCorp separately moved the Commission for clarification on the due date for its answer to the Complaint, alternatively requesting an extra five days in

which to file an answer if the Commission maintained its original position that it had until September 18, 2009, in which to file an answer. Id. at 3–4. International Paper’s QF contract with PacifiCorp expires on December 31, 2009. Thus, time is of the essence.

III. Discussion

The rule subsection at issue, OAR § 860-029-0100(7), states only that a respondent must file its response with the OPUC “[w]ithin 10 calendar days of service of the complaint” The operative event in subsection (7) is *service* of a complaint, not filing. Simply put, once service is tendered by the Commission, no further conditions need be satisfied to begin the running of the ten day answering period. While International Paper filed its Complaint with the OPUC on September 4, 2009, the Commission itself provided service of the Complaint on PacifiCorp—which was completed, by PacifiCorp’s own admission, on September 8, 2009. Clarification Motion at 1. Therefore, the Commission’s initial calculation of a September 18, 2009 due date was entirely proper.

The Commission could have, but purposefully did not, withhold actual service of the Complaint until disposition was made on the Waiver Motion. PacifiCorp suggests that no answer should be required “until 10 calendar days *after* the Commission has ruled on and granted International Paper’s waiver motion and request for leave to file complaint.” Id. at 3 (emphasis added). But if the Commission had intended this result, it could easily have withheld service of the Complaint until such disposition was made. Since the Commission did precisely the opposite—the purpose in *not* delaying service of

the Complaint should be manifest to both parties: the 10 day clock for a response was intended to start on September 8, 2009, and to expire on September 18, 2009.

The Commission's action, in choosing to immediately serve PacifiCorp and begin the 10 day response clock, is in accord with the letter and spirit of its prior decisions. In resolving any QF negotiation impasse, the OPUC has committed itself to expedited review: "The Commission will adopt rules *to expedite* . . . QF contract review." Re OPUC, OPUC Docket No. UM 1129, Order No. 07-360 at 10 (Aug. 20, 2007) (emphasis added). During the two recent public meetings in which PacifiCorp's avoided costs were discussed, the Commissioners assured the parties that issues surrounding the appropriate avoided cost rate would be considered expeditiously. If PacifiCorp's request for an *additional* ten days in which to prepare an answer is granted, beginning to run only upon a determination of the Waiver Motion, the goal of expedited resolution will be subverted.

Nor would it be just to allow PacifiCorp to delay resolution of the present dispute still further. In accord with the spirit of expedition in QF negotiations, the OPUC adopted the following guideline: "When the parties have agreed, the utility will prepare a final version of the contract within 15 business days." Id. at Appendix A, page 2, Adopted Guideline 2.e. As International Paper has consistently explained, the parties were in agreement on a renewed PPA by early August 2009—when International Paper accepted the terms of PacifiCorp's draft PPA. Complaint at 4, ¶ 10; Waiver Motion at 2; Motion to Expedite at 1–2. Fifteen days have long since passed from the date of this agreement and yet, contrary to the OPUC's adopted guideline, PacifiCorp has shrugged

off the Commission's requirement and has refused to offer a final version of the renewed PPA. To permit PacifiCorp more time than the allotted 10 days for response would be inequitable in the extreme.

Worse still, under Schedule 38, section B.6, PacifiCorp itself has committed to provide "a final, executable version of" a PPA within 15 business days of a QF request. International Paper expressly requested a finalized, executable PPA on August 19, 2009. Complaint at 4, ¶ 11. Thus, PacifiCorp is in violation of its own tariff and the Commission's rules. The delay it is seeking here is quite obviously form over substance.

In plain terms, the Commission requires that utilities "should not make adjustments to standard avoided cost rates other than those approved by the Oregon Commission." Re OPUC, Order No. 07-360 at Appendix A, page 3, Adopted Guideline 8. In defiance of the Commission, however, PacifiCorp has refused to provide a final, executable PPA at rates approved by the OPUC at the time PacifiCorp incurred its obligation to purchase power from International Paper. Complaint at 10–11, ¶¶ 30, 31. Therefore, in order to facilitate an expeditious resolution of the present dispute, the Commission's original indication of a September 18, 2009 due date for PacifiCorp's answer is proper.

On a final note, the eDocket for UM 1449 was very recently modified; it presently indicates that PacifiCorp's answer is due on Tuesday, September 22, 2009. No explanation has been given for this change. Nor is it apparent how this new date may have been derived, as it marks the tenth day after September 12, which was a Saturday.

PAGE 5 – INTERNATIONAL PAPER'S RESPONSE

Neither is Monday, September 21, 2009, a legal holiday. Thus, by any logical method of calculation, the new September 22 due date seems either random or a mistaken entry. Consequently, International Paper asks the Commission to abide by its original September 18 due date.

IV. Conclusion

In the interest of reaching an expeditious determination on the merits of the present Complaint, and in light of the unjustified delay already exacted by PacifiCorp, International Paper respectfully asks the Commission to deny the Clarification Motion, rejecting either the additional 10 days or 5 days proposed by PacifiCorp, and to uphold the original Commission requirement that an answer be due 10 days after Complaint service: on September 18, 2009.

Dated this 14th day of September, 2009.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Melinda J. Davison

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